IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-4-2006

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.21654 of 2004
and
W.P.Nos.3822 and 3823 of 2006
and
W.P.M.P.Nos.26156 and 26157 of 2004
and
W.P.M.P.Nos.4082 and 4083 of 2006

W.P.No.21654 of 2004:

1.H.Nagarajan
2.S.Syed Sadique
3.R.Manonmani
4.S.Saradha
5.S.Elango
6.V.Gomathi
7.A.S.Kalpanakiran
8.P.G.Malathi
9.V.Kamakshi
10.R.Malliga Kamaraj
11.K.Krishnamurthy
12.S.Ravichandran
13.T.Bakirathi
14.S.Ramaa
15.K.Kothandapani
16.N.Venkatasubramanian
17.D.V.C.Balachandran
18.N.Veerabhadran
19.R.Ulaganathan
20.N.Omprakash
21.K.Kalaivani
22.D.Anbalagan
23.Rajalakshmi
24.S.Venkataraman
25.M.Chockalingam
26.D.Vincent Gnanaraj
27.S.Solai Azhagu .. Petitioners

vs

1.The State of Tamil Nadu
rep. By its Secretary to Govt.,
Home Department, Fort St. George
Chennai 600 009.

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2.The Director General of Police
Dr.Radhakrishnan Salai
Chennai 600 004.
3.Tamil Nadu Public Service Commission
rep. By its Secretary
Omanthur Estate
Chennai 600 002.
4.V.Subramanian
Superintendent
Police Training College
Chennai 600 083. .. Respondents

W.P.No.3822 of 2006:

1.The Secretary to Government
Home Department
Fort St. George
Chennai 9.

2.The Director General of Police
Chennai 4. .. Petitioners

vs

1.S.Premkumar, Assistant,
O/o. The Director General of Police
Chennai
2.The Registrar,
Tamil Nadu Administrative Tribunal
Chennai 104.
3.C.Selvaraj, Assistant,
O/o. The Director General of Police
Chennai 4.
4.S.Sarada, Assistant
Police Radio Office
Chennai 4.
5.D.Vijayakumar, Junior Assistant,
O/o. The Director General of Police
Chennai 4. .. Respondents

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W.P.No.3823 of 2006:

1.The Special Commissioner & Secretary
to Government
Personal and Administrative Reforms
(Per.j) Department
Fort St. George, Chennai 9.
2.Director General of Police
Chennai 4.
3.The Secretary to Government
Home Department
Fort St. George, Chennai 9. .. Petitioners

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vs

1.T.A.Kannappa, Assistant
O/o. The Human Right Social Justice
& CID, Chennai (Formerly Junior
Assistant, O/o. The Director
General of Police, Chennai.)
2.The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 104.
3.G.Selvaraj, Assistant
O/o.The Director General of Police
Chennai 4.
4.S.Sarada, Assistant,
Police Radio Office, Chennai 4.
5.D.Vijayakumar, JA,
O/o. The Director General of Police
Chennai 4. .. Respondents

W.P.No.21654/2004 filed under Sec.226 of the Constitution of India praying to issue a writ of mandamus directing the 1st and 2nd respondents to draw the seniority list in the post of Assistants in the Tamil Nadu Ministerial Subordinate Service Police Department by placing the petitioners above the compassionate, 10(a)(i) and other categories of appointees in the same department in accordance with Rule 10 of the Tamil Nadu Special Absorption Rules 1987 by reckoning the date of entry into service of the petitioners as November, 1983 i.e., the date of the competitive examination through which the petitioners are entered into the service and consequently direct the 1st and 2nd respondents to promote the petitioners to the post of Superintendent in the same department with all service and other monetary benefits.

W.P.No.3822 of 2006 filed under Sec.226 of the Constitution of India praying to issue writ of certiorari calling for the records pertaining to the orders made in O.A.No.5691 of 1993 dated 20.10.2003 on the file of the Tamil Nadu Administrative Tribunal, and to quash the same.

W.P.No.3823 of 2006 filed under Sec.226 of the Constitution of India praying to issue writ of certiorari calling for the records pertaining to the orders made in O.A.No.3317 of 1992 dated 20.10.2003 on the file of the Tamil Nadu Administrative Tribunal, and to quash the same.

For Petitioners in W.P.21654/2004 : Mrs.C.Uma for Mr.L.S.M.Hasan Fizal

For Petitioners in W.P.Nos.3822 and 3823/2006 : Mr.E.Sampath Kumar Government Advocate

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For Respondents in
W.P.21654/2004 : Mr.E.Sampath Kumar
Government Advocate
for RR1 and 2

Mr.R.Sureshkumar for R3

No appearance for R4

For Respondents in
W.P.3822 and 3823
of 2006 : Mr.S.Ravi for R1

R2-Tribunal

COMMON ORDER

(Order of the Court was made by P.K.MISRA, J.)

Heard learned counsel appearing for the parties.

2. W.P.Nos.3822 and 3823 of 2006 have been filed by the Government against the orders of the Tribunal in O.A.Nos.5691/93 and 3317/92. The said two original applications have been filed by the respondent No.1 in each of the writ petitions. These two respondents/applicants, namely Prem Kumar and T.A.Kannappa, prayed for setting aside the order dated 14.8.1991, as per which the Director General of Police has refused to grant them seniority above the appointees under Special Absorption Rules and the TNPSC candidate. The case of the contesting respondents/applicants is that they were appointed as Junior Assistant on 25.11.1985 and 5.8.1985 respectively on compassionate grounds. Their appointments were made under Rule 48 of the General Rules and they have become full members of the Tamil Nadu Ministerial Service. These applicants were appointed as Junior Assistant and given postings in the Police Department. Between 1981 and 1983, a ban had been imposed by the Government for selection of Junior Assistant and other ministerial staff by the Service Commission. In view of absence of selection by the Service Commission, the existing vacancies were filled up by resorting to emergency appointment under Rule 10(a)(i). Such persons who have been appointed as Junior Assistant, Steno-typist and Typist under Rule 10(a)(i) continued to work even after 1984. Since there was a ban on recruitment by the Tamil Nadu Public Service Commission and since these people had worked for nearly four years, the Government wanted to regularize their appointment and after getting concurrence of the Tamil Nadu Public Service Commission, they were all directed to take special qualifying examination to be conducted by the Tamil Nadu Public Service Commission. Accordingly all those temporary candidates appeared subsequently and were selected by the Tamil Nadu Public Service Commission and continued to be in service beyond 1984. So far as the absorption of these temporary persons

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in regular streams is concerned, the Government passed Special Absorption Rules 1987 which provided for their absorption, their regularization and also fixation of their seniority. Another set of candidates got postings, who having been selected by the Service Commission in the selection held in the year 1983. Even though selection was made in the year 1983 by the Tamil Nadu Public Service Commission, postings were given to these persons between 1985 and 1987. Such appointees, who have been given regular postings prior to Kannappa and Prem Kumar, have been placed in the proper seniority above them and there is no controversy. The applicants were appointed on compassionate grounds and they got postings in the month of August and November, 1985. So, the controversy regarding seniority is three categories of persons, Special Absorption Rules candidates, who have been appointed under Rule 10(a)(i) prior to 1984 but who were regularized under Special Absorption Rules, 1987, and Tamil Nadu Public Service Commission candidates selected in the Selection held in 1983 but appointed after the applicants (T.A. Kannappa and Prem Kumar), who were appointed on compassionate grounds. These two applicants in O.A.No.5691 of 1993 and O.A.No.3317 of 1992 claim that their seniority should be reckoned from the date of the initial appointment, and persons selected through Public Service Commission but appointed after their appointment, should not be treated as senior to them. Their contention has been accepted by the Tribunal which is being challenged by the State Government.

3. W.P.No.21654 of 2004 has been filed on behalf of the candidates who were selected on the basis of recruitment examination held by the Tamil Nadu Public Service Commission in the year 1983; but, they came to be appointed on subsequent dates, and they claim seniority above all candidates who were subsequently recruited after the selection process has started. They are also claiming seniority over the candidates, who have been appointed on compassionate ground. This is sought to be repelled by the original applicants in O.A.3317/92 and O.A.5691/93.

For convenience, the writ petitioners in W.P.No.21654 of 2004, who though selected earlier were appointed after the two applicants (T.A. Kannappa and Prem Kumar), are referred to as "the TNPSC appointees" and those applicants appointed under Rule 10(a) as temporary, but regularized on the basis of Special Absorption Rules are described as " the Special Appointees".

4. The recruitment examination was held by the Tamil Nadu Public Service Commission (TNPSC) in November, 1983. Due to various reasons, the appointments were made between 1985 and 1988. In the meantime, many persons who had been appointed under Rule 10 (a)(i), without being selected through the Tamil Nadu Public Service Commission, and who had already served under the Police Department, were regularised with effect from 25.6.1984 as per G.O.Ms.No.996 dated 22.9.1984. The relevant portion of the G.O. reads as follows:

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"The Government accordingly issue the following orders:-

The services of all the temporary personnel in the category of Junior Assistant, Typist and Steno-typist in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service and Typist and Steno-typist in the Tamil Nadu Secretariat Service recruited through Employment Exchange under General Rule 10(a)(i) and who were in temporary service as on 25.6.1984 be regularised with effect from 25.6.1984 in the same category and in the Department in which they were working.

5.Orders regarding fixation of seniority, age, educational qualification, pay, leave etc. will be issued separately."

At that stage, some objections had been raised by the candidates selected through the TNPSC, against the seniority. Since no specific rule was available regarding fixation of seniority, Rules were framed under Article 309 of the Constitution of India under G.O.Ms.No.548 dated 19.6.1987. The relevant portion of the said G.O. reads thus:

"(G.O.Ms.No.548, Personnel and Administrative Reforms (Per.J).19th June, 1987)
READ
G.O.Ms.No.996 Personnel and Administrative Reforms (Placements) Department dated 22nd September, 1984.
ORDER:

In the Government Order read above, the services of all the temporary personnel in the category of Junior Assistant, Typist and Steno-Typist in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service and Typist and Steno-Typist in the Tamil Nadu Secretariat Service recruited through Employment Exchange under General Rule 10(a)(i) and who were in temporary service as on 25th June 1984 were ordered to be regularized with effect from 25th June 1984 in the same category and in the department in which they were working.

2.The Government have examined the question of framing rules governing the service conditions of such persons appointed regularly as per Government Order read above.

3.The following Notification will be published in the Tamil Nadu Government Gazette.
NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following rules:

The rules hereby made shall be deemed to have come into force on the 25th June 1984.

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RULES

1. (i) Short title and application - These rules may be called the Tamil Nadu Special absorption Rules, 1987.

(ii) These rules shall apply to all candidates appointed through Special Absorption in 1984.

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"10.Seniority:- The seniority of a candidate appointed through Special Absorption, in 1984, shall be fixed with reference to the date of first temporary appointment in the departmental unit in which he had been absorbed irrespective of whether he had been subsequently discharged for want of vacancies or appointed again through the Employment Exchange in that departmental unit, and not with reference to the date of first appointment in any other departmental unit where he had acted previously before his absorption in the particular departmental unit. He shall be ranked below the candidates selected by the Tamil Nadu Public Service Commission on the results of the competitive examination held in November, 1983 irrespective of the date of appointment of these candidates. If more than one candidate is appointed on the same day, their seniority shall be fixed with reference to the age as laid down in sub-rule (a) of Rule 35 of the General Rules. The rule of reservation (general rules 22) shall not apply to these candidates.

Provided that if any person is appointed to the post of Junior Assistants/Typists/Steno-typists in accordance with the special rules the seniority of such person shall be placed above the candidates appointed through Special Absorption in 1984.

Provided also that if any of the persons appointed to the posts of Junior Assistant/Typist/Steno-typist in accordance with the Special Absorption Rules, 1984 and whose services were regularised in one department on 25.6.84 and reallotted to a new department for want of vacancy through the Tamil Nadu Public Service Commission shall take his seniority in the new department from the date of his temporary appointment in the department from which he was reallotted."

5. It is admitted by all that the validity of such G.O.No.548, dated 19.6.1987 has been upheld by the High Court. In other words, the validity of this Rule has not been challenged by any person including the person employed under General Rules 10(a)(i), who had been subsequently regularised. From the provisions contemplated in Rule 10 of Special Absorption Rules, 1987, it is apparent that irrespective of the date of appointment of General Rules 10(a)(i) candidate, who has been regularised subsequently, such candidate has to be ranked below the candidates selected by the Tamil Nadu

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Public Service Commission on the basis of the competitive examination held in November, 1983 irrespective of the date of appointment of the TNPSC candidates. In other words, those General Rules 10(a)(i) candidates, who had been selected and who were regularised with effect from 25.6.1984, have to be ranked below the candidates selected through Tamil Nadu Public Service Commission in the examination held in November, 1983. It is also to be kept in view that the candidates selected in such examination held in November, 1983, came to be appointed during different years till 1990, and no other TNPSC examination had been held.

6. At that stage, in the year 1988, certain employees who had been appointed on compassionate ground, were ousted from service on the ground that they were the junior most and they must rank below the General Rules 10(a)(i) candidates as well as candidates selected through the TNPSC. Such action of the Government was challenged by the compassionate appointees in W.P.No.7730 of 1987, which was allowed by the learned Single Judge by judgment dated 8.4.1988. It is necessary to extract relevant portions of the discussion contained in such judgment, as follows:

> "3. ... To comprehend the point taken, it would be convenient to refer to the three sources from which appointments have been made to Tamil Nadu Ministerial Service. They are (1) Those recruited by Commission by holding examination; (2) those appointed under Special Absorption Rules framed under the proviso to Art. 309 of the Constitution of India; and (3) those who were recruited on compassionate grounds based on G.O.Ms.No.951, P & AR dated 14.9.1984 and regularised with the concurrence of Commission under reg. 16(b) of Commission's Regulations. It would not be proper for respondents to claim that petitioners who were appointed on compassionate grounds, are government by Absorption Rules.
>
> 4. All of them belong to Ministerial service. Respondents state that in the Special Rules,no provision is made to fix interse seniority as between these three sources from which appointments are made. Rule 35 of the General Rules deals with seniority. Rule 35(a) confines itself to fixation of seniority based on ranking obtained in the approved list of candidates drawn by Commission or other appointing authority subject to rule of reservation when it applies. Obviously this could have no application to the instant matter. Rule 35(aa) reads as follows :-
>
> "The seniority of a person in a service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as punishment, be

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determined with reference to the date on which he is appointed to the service, class, category or grade".

Persons like petitioners appointed on compassionate grounds are direct recruits, as defined in Rule 2(14) of Tamil Nadu State and Subordinate Service Rules (General Rules), because they come under the expression 'in any other case' mentioned therein. They were not appointed through Commission by writing the necessary examination. The appointing authority i.e., the Collector, with the approval of the Government and the concurrence of the Commission, had appointed them. Hence they are not promotees, but direct recruits. Rule 6 of General rules deals with "method of recruitment" they being direct recruitment and recruitment by transfer. This not a case where, by more than one method of recruitment, appointments are made. All are direct recruitments drawn from three sources. Hence Rule 35(aa) does not apply.

5. Under Rule 2(a) a person is appointed to a service when in accordance with these rules, he discharges for the first time the duties of a post. Rule 2(1) states that be come a "member of a service" when he has been appointed to that service. Whether a candidate is appointed through the Commission or appointed under Absorption rules or appointed under compassionate grounds, all of them are direct recruits. In the absence of any specific rule framed to fix interse seniority among them; the relevant G.Os could alone govern the rights of these personnel. Reliance is placed on G.P.Doval V Chief Secy., Govt. of U.P. (AIR 1984 SC 1527) to claim that whenever a particular situation is not governed by specific rules, then administrative instructions would have the force of law.

6.Only G.O.Ms.No.951 P & AR., dated 14.9.1984 and G.O.Ms.No.548 P & AR (Per.J) dated 19.6.1987 are relevant to resolve the seniority claims. As for the later G.O., it contains the rules framed under the proviso to Art. 309, and therefore, has to be treated differently from the earlier G.O. It deals with those appointed on temporary basis as on 25.6.1984. The G.O. came into force on that day. Rule 1(2) states that the Absorption rules apply only to those candidates appointed through Special Absorption in 1984. What had happened was that recruitment was not being made through the Commission for certain years, and the services of such of those who have been appointed on temporary basis under rule 10(a)(i) until 25.6.1984 were directed to be regularised. It is to implement the said decision which was not in accordance with the rules then existing; the Absorption rules were framed. Inspite of being aware of G.O.Ms.No.951 P & AR dated 14.9.1984 no provision was

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made therein as to how the seniority between the candidates appointed under Absorption rules and candidates appointed on compassionate grounds, was to be worked out. It took note of only the seniority to be fixed between candidates appointed under Absorption rules and Commission candidates. As for the candidates appointed under Absorption Rules, prior to the coming into force of the Rules, G.O.Ms.No.996, P & AR dated 22.9.1984 was issued stating therein that no regular candidate was appointed through Commission for vacancies which arose between 1981 and 1984, and that it was only on 25.6.1984, a ban was imposed on temporary appointments to be made through Employment Exchange, and that examination was held in November, 1983 by the Commission for appointment under the Rules. In para 5, it is stated that regarding fixation of seniority, age, educational qualification, etc., separate orders will be issued. Therefore, under Rule 10 of Absorption Rules, the seniority of all candidates selected by the Commission in the examination held in November, 1983 is directed to be fixed above the candidates appointed under Absorption Rules irrespective of the... date of first appointment of the letter. Thus there is a specific special rule regarding seniority between Commission candidates and candidates appointed under Absorption Rules, viz., Rule 10. However, this rule does not deal with the candidates appointed on compassionate grounds. According to this rule, candidates appointed under Absorption rules are juniors to all the Commission candidates of November, 1983.

7.As between Commission candidates and candidates appointed on compassionate grounds, it is only G.O.Ms.No.951 P & AR (Per.B) dated 14.9.1984 which deals with their inter-se-seniority. Though this G.O. nowhere makes any reference to candidates appointed under Absorption rules which the government ought to have done by applying the rule of harmonious construction; once candidates appointed under Absorption Rules are to be treated as juniors to Commission candidates of 1983, and when the said G.O. directs that the candidates appointed on compassionate grounds are to be fitted according to the dates of regularisation of their service among the candidates appointed by the Commission in that year, it has to be held that the compassionate candidates are to be ranked on a par with the Commission candidates for the purpose of seniority."

7. Ultimately, the learned Single Judge gave specific direction contained in paragraph 9, which is extracted hereunder:

"To work out the interse seniority for the concerned year, the procedure to be followed is as follows:-

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1.All those who have taken up appointments in the concerned year through Commission have to be listed according to the dates on which they joined duty i.e., when they discharged the duty in the post for the first time.

2.Another list of all those who have been appointed on compassionate grounds in that year with their respective dates of regularisation of service to be prepared.

3.Taking each name in the Commission candidates list, he or she will have to be fitted in the list of candidates appointed on compassionate grounds, immediately below the preceding date on which the candidate appointed on compassionate grounds had been regularised.

4.In such of those cases where on the same day, the service is to be computed, then the candidate appointed on compassionate grounds will be placed above the Commission candidate."

8. Such decision of the learned Single Judge was challenged by the State Government in Writ Appeal No.787 of 1988. Such appeal filed by the Government, was dismissed on 27.9.1988, and the decision of the learned Single Judge was specifically approved by the Division Bench by observing as follows:

"2.The 157 persons having been absorbed under the Special Absorption Rules, the rule of seniority set out in rule 10 of the Special Absorption Rules alone must govern and if it so governs, the petitioners, who are appointed in accordance with the special rules, must have their seniority placed above the 157 persons. Apart from the other reasons, expressed by the learned single judge, in countenancing the grievances of the petitioners, with which we agree, in our view the above feature by itself convincingly supports the case of the petitioners. We are not persuaded to interfere in Writ Appeal and accordingly the writ appeal fails and the same is dismissed. We make no order as to costs."

9. Following the aforesaid observation of the learned single Judge and the Division Bench, the two original applications in O.A.Nos.3317/92 and 5691/93 have been allowed by the Tribunal by judgment dated 20.10.2003, which has been challenged by the State Government.

10. The main contention raised by the counsel for the State Government in W.P.Nos.3822 and 3823 of 2006 is to the effect that the candidates selected through Tamil Nadu Public Service Commission must be ranked above those appointed under Special Rules, which would also include any appointment on compassionate ground, as evident from Rule 10 of G.O.Ms.No.548 dated 19.6.1987.

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11. After going through the provisions contained in the said G.O., and particularly keeping in view the interpretation given by the learned Single Judge which has been specifically approved by the Division Bench, which has become final, we are unable to accept the contention raised by the learned counsel appearing for the State Government. As rightly observed by the learned Single Judge, G.O.Ms.No.548 does not deal with the question of seniority of those appointed on compassionate ground. It only refers to question of seniority between General Rules 10(a)(i) appointees and regular appointees who had been selected through Tamil Nadu Public Service Commission in the examination held in November, 1983. As per such Rules under Article 309 of the Constitution of India, seniority of the appointees under General Rules 10(a)(i) who had been subsequently regularised, had been depressed and kept below the last candidate selected on the basis of November, 1983 examination. Since the validity of such rule has not been challenged, as per such rules, it is apparent that General Rules 10(a)(i) candidates have to be ranked below the candidates who have been selected as per the examination held in November, 1983. In such rule, however, nowhere it is indicated that the seniority of the TNPSC candidate has to be advanced to the year of examination that is to say 1983. It is also nowhere indicated that such persons shall be deemed to have been appointed in 1983.

12. It is, therefore, obvious that the seniority of a person appointed on the basis of November, 1983 examination, has to be fixed on the basis of the date of substantive appointment and not on the basis of the date of the examination. As a matter of fact, this aspect has been very elaborately clarified by Justice Sathiadev, in the decision dated 8.4.1988, which has been specifically approved by the Division Bench. Hence, we are not inclined to take any different view of the matter. In view of the direction clearly indicated in paragraph 9 of the judgment of the learned Single Judge, which has been specifically approved by the Division Bench, it is apparent that the question of seniority of the person appointed through TNPSC or person appointed on compassionate ground, has to be fixed on the basis of the date of appointment.

13. So far as General Rules 10(a)(i) candidates are concerned, obviously such candidates have to be ranked below the TNPSC candidates irrespective of the date of appointment of such TNPSC candidates and the Special Absorption Rules candidates. In other words, 10(a)(i) appointees have to be ranked below the last TNPSC candidate selected on the basis of the examination held in November, 1983. Since the validity of such rule has not at all been challenged, the General Rules 10(a)(i) candidates are deemed to be below all candidates selected on the basis of November, 1983 examination held by the TNPSC.

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14. For the aforesaid reason, the Writ Petition Nos.3822 and 3823 of 2006 filed by the Government, are dismissed. Writ Petition No.21654 of 2004 is partly allowed, and it is directed that the candidates selected by the TNPSC on the basis of the examination held in November, 1983, shall rank above General Rules 10(a)(i) candidates; but, so far as compassionate appointees are concerned, the inter se rank of the compassionate appointees and TNPSC candidates shall depend according to the date of their initial appointment, as has been held in paragraph 9 of the judgment in W.P.No.7730/87 and W.A.No.787/88. No costs. Consequently, connected WPMPs are closed.

nsv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To;

1.The Secretary to Government, State of Tamil Nadu,
Home Department, Fort St. George
Chennai 600 009.
2.The Director General of Police
Dr.Radhakrishnan Salai
Chennai 600 004.
3.The Secretary
Tamil Nadu Public Service Commission
Omanthur Estate, Chennai 600 002.
4.The Registrar
Tamil Nadu Administrative Tribunal
Chennai 104.

+ 1 cc to Mr. G. Gladys Danial, Advocate SR No. 16261

+ 1 cc to the Government Pleader SR No. 16838

+ 2 ccs to Mr. S. Ravi Advocate SR No. 16240

W.P.No.21654 of 2004
and W.P.Nos.3822 and
3823 of 2006

VC(CO)
SR/18.8.2006

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